THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Income Tax Appeal No. 67 of 2003
Old I.T. Appeal No. 260 of 1999

1. The Commissioner of Income Tax, Meerut
2. Assistant Commissioner of Income Tax, Circle I, Saharanpur.

…Appellants.

Versus

Shri Ashok Prapann Sharma,
Anand Bhawan, Rishikesh, District Dehradun.

…Respondents.

Sri Pitabmar Maulekhi, Addl. Advocate General, learned counsel for the appellants.
Sri Arvind Vashisth, Sr. Advocate, assisted by, Adv. for the respondent.

Dated July 13, 2006

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Heard Sri Pitamber Maulekhi, learned Additional Advocate General for the appellants as well as Sri Arvind Vashist, learned counsel for the respondent.

This appeal is directed against the judgment and order dated 31.5.1999 passed by the Income Tax Appellate Tribunal (***for short ITAT***) in ITAT No. 6737/D/92 & 6564/D/95, Ashok Praapann Sharma Vs. Assistant Commissioner of Income Tax, Circle-I, Saharanpur, whereby the Assessing Officer was directed to adopt the fair market value of land in question as on 1-4-1974 @ Rs. 50/- sq.yard for the assessment year 1990-91 and the assessee was allowed to be given consequential relief.

Relevant facts for a just decision of the appeal are that earlier as per income tax returned filed by the respondent-assessee for the Assessment Year 1989-90, notice was issued under Section 143(2) of the Income Tax Act and after necessary enquiries and proceedings, the Assessing Officer held that income tax was payable by the assessee on the net taxable income of Rs. 15,15,905/- and

accordingly, the assessee was levied interest and it was directed that penalty notice be issued. The Assessee went up in appeal before the Commissioner of Income Tax (Appeals) Muzaffarnagar (***for short the CITA***), who set aside the findings of the Assessing Officer on certain issues vide his order No. 122/92-93 dated 20-7-1992.

On remand of the case, the Assessment Officer after hearing the parties had held the assessee is entitled to deduction in respect of cost of improvement of the land of Khasra No. 279 and 74/30 as well as 276 while computing the capital gain in respect of sale of above mentioned Khasra Numbers. The A.O. further observed that deduction for investment in U.T.I. under the provisions of Section 54E with a direction that investment towards U.T.I. should be allowed out of sale proceeds of capital assets within the period of six months and since no investment was made during the Assessment Year 1988-89 and 1989-90, therefore, no deduction was allowed under the said provision of the Act. Ultimately after considering all relevant issues, the Assessing Officer held that the income tax was payable at Rs. 15,15,905/- by the assesee for the Assessment year in question and accordingly passed impugned order dated 31.12.1992 directing the assessee to pay interest as per provisions and also ordered for issue of penalty notice. Aggrieved, the assessee/respondent went up in appeal before the CITA, who partly allowed the appeal and granted relief to the assessee only in respect of the land of Khasara No. 279 which was acquired by the State vide judgment and order dated 9-7-1992. The respondent-assessee approached the Income Tax Appellate Tribunal Delhi, who vide his order dated 31.5.1999 has observed that the land in question was sold in Assessment year 1988-89 and 1989-90 @ Rs. 150/- per sq.yard to M/s Ashoka Associates who in turn sold it to various buyers by dividing the same in the small plots at various rates ranging from Rs. 200/- per sq.yards to Rs. 300/- sq.yard. as per details furnished at pages 175 to 178 of the complition. The assessee submitted before the Assessing Officer comparable sale instances of plots of land in the near-by area of Bharatji Temple.

The sale instance by way of a registered sale deed executed in the year 1979 shows that value of plot in the area was Rs.70/- per sq.yard. The A.O. had to estimate the value as on 1.1.1974 for computing taxable capital gain. The Assessing Officer has not brought on record any other comparable sale deed and ultimately the fair market value of the land in question @ Rs. 50/- per square yard, as claimed by the respondent-assessee was accepted and the computing capital gains in the relevant years. The A.O. was also directed to grant consequential relief as regards the levy of interest under the Income Tax Act. Aggrieved, the Revenue has come up in the present appeal.

The following question of law arises for consideration in the present appeal:

"Whether, on the facts and in the circumstances of the case, the ITAT was legally justified in directing the A.O. to apply rate of acquisition @ Rs.50/- per sq.yard in respect of computation of capital gain whereas, the assessee and the Department have already accepted value of land as on 1.4.74 in the wealth tax assessment at Rs. 10,000/- per acre in respect of Khasra no. 279/1 and for land compulsorily acquitted by the Avas Vikas Parishad for which no dispute is pending?"

In this appeal the only question to be determined is relating to the claim of the assessee for grant o deduction respect of fair market value of the land in question. It is not in dispute that the land in question was soled in the year 1988-89 and 1989-90 @ Rs. 150/- per sq.yard to M/s Ashoka Associates, who in turn had sold it to various buyers by converting it into small parts and at different rates ranging from Rs. 200/- per sq.yard to Rs. 300/- per sq.yard. For claiming the deduction, the assessee had submitted before the assessing authority the sale instances executed by way of registered

sale deeds during the year 1979, which shows the value of plots of that area was Rs. 70/- per sq.yard.

The Assessing Officer had to estimate the value of land as on 1.1.1974 for computing the taxable income on capital gain. The A.O. after assessment by the C.I.T.A. has held as under:-

"There is an another issue which the assessee has raised, the C.I.T. (Appeal) has directed to re-decide the issue of fair market value of the land. In this regard, I would like to discuss first of all the basis for taken the fair market value as on 1.1.74 at Rs. 10,000/- per acre. In this regard it is important to pointed out that as per the Valuation Report of Maj. R.P. Geol, Govt. Gazetted valuer upto 30.6.1979 wherein value of the land bearing Khasra No. 279/1 as on 31.12.1976 has been taken at Rs. 10000/-. The valuation Report was accepted by the Department and also by the assessee. Thus, once an important piece of evidence in this regard is available the same should be applied for this purpose, and this is what had been doe in the asst. orders passed earlier. The sale deeds which the assessee has produced are for the subsequent period and are in respect of land bearing Khasra Nos. than the land under discussion. The assessee has further emphasized that the impugned sales which acquisition are for non agricultural purpose in the hands of the transferees and therefore potential value of the land for such non agricultural use cannot be simply overlook but has properly to be taken into account. I do not agree with the assessee. Only recently with the increase in the development activities of non agricultural nature the cost of land for non agricultural purposes has increased in earlier seventies agricultural land continued to be used for agricultural purposes and no agricultural land for non agricultural purposes. It is a recent phenomenon that even agricultural land is being converted into non agricultural and considering the activities are being carried on them and that is why even agricultural land are fetching handsome price if they are useful for other purposes also such as construction, Industrialization etc. Thus, on 1.1.74 first of

all the agricultural land can not be foreseen as being used for non agricultural purpose and, even if, it is the value which would not be more than Rs. 10,000/- per acre which has been taken in the case of the assessee."

It was further observed that "*the certificate of the Municipal Commissioner is on record and further even in the sale deeds it is described that the land beyond municipal limits. On the basis of these two evidences the land can be held as fallen beyond municipal limits. However, merely on the basis of fact that lands falls beyond municipal limits does not automatically become agricultural land. As a matter of fact most of the construction activities in developing town are taking place beyond municipal limits and that is why the town are expending beyond municipal limits. In this regard on the basis of sale deeds filed by the assessee is evident that the assessee is selling the land in small pieces of around 400-500 sq.yard, and accordingly, the same cannot be held as sale of agricultural land."*

The Income Tax Appellate Tribunal (I.T.A.T.) fell into error in relying upon the sale deed of the year 1979 and granting deductions to the assessee in respect of fair market value of the land in dispute @ Rs. 50/- sq.yard ignoring the valuation of the land in question made by the gazetted government valuer Maj. R.P. Goel as on 31.12.1976, which was Rs. 10,000/- per acre, i.e. equal to approximately Rs. 2/- per sq.yard in respect of plot no. 379/1 and in respect of land bearing Khasara No. 74/30, which was @ Rs. 15,000/- per acre. That comes to Rs. 3/- per sq.yard approximately as was confirmed by the C.I.T.A.. The I.T.A.T. by accepted the claim for grant of deduction respect of fair market value of the land in question at Rs. 50/- per sq.yard ignoring the finding recording by the learned Assessment Officer and C.I.T.A. that the fair market value as on 1.1.74 was Rs. 10,000 and Rs. 15,000/- per acre, i.e. Rs. 2/- and Rs. 3/- per sq.yard respectively, which was based on the report of the registered valuer submitted by the assessee for the

wealth tax proceeding that these very years and the Wealth Tax was assessed on the said value, therefore, it was not open for the assessee to claim different fair market value of the land for the purpose of payment of tax under the Income Tax Act. Thus, the finding recorded by the I.T.A.T. is set aside and the findings recorded by the Assessment Officer and the C.I.T.A. is confirmed.

The question is answered in favour of the Revenue and against the assessee.

In the result, the appeal is allowed. The order appealed against is set aside. No order as to costs.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP